

tampers and other light construction equipment. He worked for the respondent on two separate occasions, November 15, 1993 to March 18, 1994 and July 6, 1994 to September 26, 1994. Between March 18, 1994 and July 6, 1994, claimant worked in a supervisory position which did not require him to perform repetitive hand motions. Prior to working for the respondent, claimant was employed by Wilson Paving, Inc., as a cement finisher, where he indicates that his hands commenced to be symptomatic as he experienced numbness and pain at night. While employed by the respondent on January 31, 1994, claimant complained of increased symptoms in his hands. Respondent's insurance carrier referred claimant to J. Mark Melhorn, M.D., an orthopedic surgeon in Wichita, Kansas, specializing in hand and upper extremity injuries, for an evaluation of the claimant on February 8, 1994, requesting among other things, Dr. Melhorn's opinion as to whether the claimant's hand problems were related to his work activities while employed with the respondent.

Dr. Melhorn examined and evaluated the claimant and diagnosed claimant as having right and left hand wrist tendinitis and probable carpal tunnel syndrome, greater on the right than the left. He placed work restrictions on the claimant and recommended conservative treatment. Dr. Melhorn attributed claimant's hand symptoms to his previous employment period with Wilson Paving, Inc., and a period during which claimant was self-employed. After the examination, claimant returned a medical form filled out by Dr. Melhorn which contained the diagnosis, restrictions and the period of time that claimant had worked for previous employers. Respondent filed an Employer's Report of Accident with the Division of Workers Compensation in reference to claimant's alleged hand injuries on February 7, 1994. Respondent also notified the claimant to file a claim for workers compensation benefits against his previous employer.

Claimant alleges that the medical form he provided the respondent, after his examination by Dr. Melhorn on February 8, 1994, was a written claim for workers compensation benefits. Claimant argues that this form, filled out by Dr. Melhorn and delivered to the respondent, satisfies the written claim requirement of the Workers Compensation Act. Claimant cites the case of Ours v. Lackey, 213 Kan. 72, 515 P.2d 1071 (1973), which held that a written claim need not take any particular form as long as it is, in fact, a claim. Whether or not a written claim was served on the respondent is a question of fact. It is for the trial court to determine what the parties had in mind. Claimant argues that the facts in this case establish that he notified the respondent on January 31, 1994 of his increased symptoms in his hands and that he intended to make a claim for compensation when he delivered the completed medical form to the respondent that contained a medical diagnosis and restrictions. On the other hand, respondent argues that the medical form, completed by Dr. Melhorn on February 8, 1994 and delivered by claimant to the respondent, did not constitute a written claim for compensation benefits. Respondent asserts that a claim was not made by the claimant at that time because Dr. Melhorn did not attribute claimant's current hand problems to his work activities for the respondent. In fact, Dr. Melhorn attributed claimant's hand problems to his prior activities with previous employers. Respondent also argues that if claimant intended that the medical form from Dr. Melhorn was a written claim for compensation, he would not have waited for more than one (1) year to request medical treatment. This is especially true since claimant had an opportunity to request medical treatment and did not do so or make an additional complaint about his hands when he was again employed by the respondent from July 6, 1994 until September 26, 1994.

K.S.A. 44-520a requires an employee to serve upon an employer a written claim for compensation within two hundred (200) days after the date of accident or, in cases where compensation payments have been suspended within two hundred (200) days after the date of last payment of compensation. If the employer fails to file an accident report with the Director after the injured employee has given notice of such accident, then the two hundred (200) day time limit to serve a written claim is extended to one (1) year from the date of such accident, suspension of the payment of the disability compensation or the date of the last medical treatment authorized by the employer. See K.S.A. 44-557(c).

In the instant case, since it is stipulated that the respondent filed a report of accident with the Director, the claimant had to file a written claim within two hundred (200) days of accident. In this case, claimant alleges two (2) different periods of accident, one November 15, 1993 through March 18, 1994 and the other from July 6, 1994 through September 26, 1994. A formal claim for workers compensation benefits was served on the respondent on April 19, 1995. This is more than two hundred (200) days from the claimant's last day worked of September 26, 1994. Accordingly, for a written claim for compensation to be timely served upon the respondent, the medical form filled out by Dr. Melhorn, delivered to the respondent in February of 1994 would have to be determined to meet the requirements of the written claim statute of K.S.A. 44-520a.

The Appeals Board has carefully reviewed the jointly-filed stipulation of facts along with Dr. Melhorn's medical records, attached as exhibits, which contained the medical form completed by Dr. Melhorn that the claimant is alleging to be written claim for workers compensation benefits. Based upon the evidence presented and for preliminary hearing purposes, the Appeals Board affirms the Administrative Law Judge's Preliminary Hearing Order denying claimant's application for preliminary benefits on the basis a timely written claim was not filed. A medical form completed by a physician that does not attribute claimant's medical condition and related symptoms to his work activities with the respondent but, instead, to another employer, does not meet the written claim requirements of K.S.A. 44-520a.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Preliminary Hearing Order of Administrative Law Judge Shannon S. Krysl, dated September 20, 1995, should be, and the same is hereby, affirmed in all respects.

IT IS SO ORDERED.

Dated this ____ day of December 1995.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Joseph Seiwert, Wichita, Kansas
Wade A.Dorothy, Lenexa, Kansas
Shannon S. Krysl, Administrative Law Judge
Philip S. Harness, Director